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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

16 UNITED STATES OF AMERICA, ) 3:05-cr-00098-HDM  
17 Plaintiff/Respondent, ) 3:10-cv-00531-HDM  
18 vs. ) ORDER  
19 JOHNATHON ROBERTS, )  
20 Defendant/Petitioner. )

21 The defendant has filed a motion to vacate, set aside, or  
22 correct sentence pursuant to 28 U.S.C. § 2255. While the motion  
23 asserts several bases for relief, the court determined that an  
24 evidentiary hearing was required for just one: defendant's claim  
25 that counsel Marc Picker rendered ineffective assistance of counsel  
26 by failing to file a motion to suppress evidence found in a search  
27 of defendant's garbage can.

1       The court appointed Fred Atcheson for the limited purpose of  
2 representing defendant at the evidentiary hearing, which took place  
3 on April 3, 2012. At the conclusion of the hearing, the court  
4 ordered the government to file, within ten days, a supplemental  
5 affidavit stating whether two photographs admitted into evidence  
6 during the hearing were provided to defense counsel before trial.  
7 At defendant's request, the court also granted defendant leave to  
8 petition the court, within ten days, to file a supplement to his §  
9 2255 motion.

10       Since the hearing, the government has filed the supplemental  
11 affidavit ordered by the court (#442). Defendant, on the other  
12 hand, has filed several motions and letters mostly unrelated to the  
13 evidentiary hearing and primarily dealing with a request to  
14 supplement his § 2255 motion with respect to his ineffective  
15 assistance of counsel speedy trial claims (hereinafter "speedy  
16 trial claim").

17       On April 12, 2012, Atcheson filed on defendant's behalf a  
18 motion requesting that the government supplement the record  
19 (#444).<sup>1</sup> The government has responded to the motion (#446), and  
20 the defendant has replied (#453). The motion seeks information  
21 relevant to the evidentiary hearing as well as information relevant  
22 to defendant's speedy trial claim.

23       On April 23, 2012, defendant filed a request to supplement his  
24 § 2255 motion with respect to his speedy trial claim (#447), which  
25 the court denied in an order dated April 30, 2012.

26       On April 30, 2012, defendant filed an "[e]mergency request to

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28       <sup>1</sup> The document was also filed as #16 in the associated civil case.

1 delay all future proceedings for 40 days with respect to  
2 petitioner's Section 2255 Motion" (#452). The request was based on  
3 defendant's concern that his supplement (#447) had not reached the  
4 court and his desire to have time to refile it if necessary.

5 On May 2, 2012, Atcheson filed on defendant's behalf a "Motion  
6 to Stay Case Forty Days & Declaration of Cause" (#454).<sup>2</sup> The  
7 motion requests a stay of 40 days so that defendant can "receive  
8 and respond to Government motions." The request further states  
9 that "the proof requested in the" motion to supplement the record  
10 "has not been received."

11 On June 18, 2012, the defendant filed a motion for  
12 reconsideration of the court's order denying his request to  
13 supplement his § 2255 motion (#462), along with a motion for  
14 "Judicial Notice of the Adjudicative Facts" in his motion to  
15 supplement (#463).

16 For the reasons that follow, the court denies both of  
17 defendant's requests to stay proceedings, his motion to supplement  
18 the record, his motion to reconsider, and his motion for judicial  
19 notice.

20 First, defendant's supplement, construed as a request to  
21 supplement (#447), has been filed with the court and placed on the  
22 docket. Accordingly, to the extent defendant seeks additional time  
23 to ensure his supplement is filed, the motion is denied as moot.

24 Second, the defendant states that he must be given a  
25 "reasonable opportunity" to respond to government "motions."  
26 However, the government has filed no motions to which defendant is

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28 <sup>2</sup> This document was also filed as #21 in the associated civil case.

1 entitled to respond. If defendant is seeking additional time in  
2 which to file his reply to the government's response to his motion  
3 to supplement the record, the motion is likewise moot, as  
4 defendant's reply has been received by the court and filed on the  
5 docket (see #453).

6 Finally, defendant appears to seek additional time to  
7 supplement his § 2255 motion. However, the court has not granted  
8 leave to the defendant for further supplementation of the § 2255  
9 motion with respect to defendant's speedy trial claim. In  
10 addition, at the conclusion of the evidentiary hearing, the court  
11 asked if either party had anything else to present to the court; at  
12 no time did either party request any additional briefing or oral  
13 argument relevant to matters presented at the evidentiary hearing,  
14 and the court has concluded that additional briefing and argument  
15 is not necessary to decide the issue. Moreover, the court has  
16 considered the defendant's motion to reconsider (#462), and finds  
17 nothing warranting reconsideration of its order denying defendant's  
18 motion to amend. For that reason, the defendant's motion for  
19 reconsideration (#462) and motion for judicial notice (#463) will  
20 be denied. Finally, for the reasons that follow, the court denies  
21 the defendant's motion to supplement the record (#444), so  
22 defendant will not be receiving further "proof" that would justify  
23 another supplement.

24 Defendant's motion to supplement the record (#444) requests  
25 transcripts of the three status conferences leading up to the April  
26 3, 2012, evidentiary hearing, as well as a transcript of the  
27 evidentiary hearing itself. It also requests verification that an  
28 exhibit attached to the government's supplement to its response to

1 defendant's § 2255 motion and referenced at the evidentiary hearing  
2 - an FBI 302 generated in connection with the search of defendant's  
3 garbage can - was disclosed to defense counsel before trial in this  
4 matter. Finally, it requests all discovery receipts from May 2005  
5 to August 2005, which defendant asserts are relevant to his speedy  
6 trial claim.

7 Transcripts of the status conferences and evidentiary hearing  
8 are not necessary for the court's determination of the defendant's  
9 § 2255 motion. The request for transcripts will therefore be  
10 addressed in a separate order.

11 As to the defendant's request with respect to the FBI 302, the  
12 government in response to the motion to supplement has produced  
13 what information it has. Clearly, defendant is in receipt of that  
14 response as he filed a reply to it (#453). The request to  
15 supplement is therefore moot. Further, the court notes that  
16 whether or not defense counsel was in possession of the FBI 302  
17 before trial is irrelevant to the court's determination of  
18 defendant's § 2255 motion, so there is no basis to stay proceedings  
19 for supplementation on that point.

20 Finally, defendant requests discovery receipts in connection  
21 with his speedy trial claim. The court has already determined that  
22 defendant may not further supplement his § 2255 motion in this  
23 regard, either legally or factually. With the discovery receipts  
24 defendant seeks to bolster the facts underlying the speedy trial  
25 claim. However, there is no reason defendant could not have  
26 requested this information much earlier. As the defendant's § 2255  
27 motion has been pending for nearly two years, the court finds  
28 defendant's request for discovery receipts untimely and therefore

1 || denies such request.

2 In accordance with the foregoing, defendant's motion to  
3 supplement the record (#444) is **DENIED in** all respects save and  
4 except for the defendant's request for transcripts, which the court  
5 will address in a separate order. Defendant's motions for a stay  
6 of proceedings (#452, #454) and letters expressing concern about  
7 the status of his supplement (#451, #456) are **DENIED AS MOOT**.  
8 Defendant's motion for reconsideration (#462) and motion for  
9 judicial notice (#463) are **DENIED**.

10 IT IS SO ORDERED.

11 DATED: This 9th day of July, 2012.

Howard D. McRillen

UNITED STATES DISTRICT JUDGE